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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YOSHIMUNE NODA, TAKESHI YAMAGUCHI, and MASATO SHIOZAKI

Appeal 2016-005858
Application 13/217,880[1]
Technology Center 2600

Before JEREMY J. CURCURI, HUNG H. BUI, and ADAM J. PYONIN, *Administrative Patent Judges*.

BUI, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's Final Office Action rejecting claims 1–5 and 7–10, which are all the claims pending on appeal. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.[2]

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[1] According to Appellants, the real party in interest is Sharp Kabushiki Kaisha. App. Br. 2.

[2] Our Decision refers to Appellants' Appeal Brief filed October 30, 2015 ("App. Br."); Examiner's Answer mailed March 18, 2016 ("Ans."); Final Office Action mailed June 11, 2015 ("Final Act."); and original Specification filed August 25, 2011 ("Spec.").

STATEMENT OF THE CASE

Appellants' invention relates to an operation console of an image formatting apparatus (i.e., printer) having a display screen and a touch panel to permit a user to select an image from a plurality of images displayed on the display screen and to scroll images other than the selected image. Spec. 2:20–3:4. For instance, "it is possible to use one finger (for example, a finger of one hand) to select an image and to use another finger (for example, a finger of the other hand) to move other images." Spec. 3:20–23.

Claims 1 and 10 are independent. Claim 1 is illustrative of Appellants' invention, and is reproduced with disputed limitations emphasized below:

> 1. An operation console including a display device having a display screen, and a touch-panel arranged superposed on said display screen for receiving a user operation on said display screen, said touch-panel capable of sensing two points being pressed at a time and further capable of sensing dragging of each pressed point, comprising:
>
> a display control device controlling said display device such that a plurality of images are displayed on said display screen;
>
> a detecting device detecting any of said plurality of images being selected, based on a user operation of pressing and dragging a point on said touch-panel;
>
> a first determining device for determining, while selection of any of said plurality of images is being detected by said detecting device, whether or not an instruction for moving images other than said selected image among said plurality of images has been given, based on a user operation of pressing and dragging another point on said touch-panel;
>
> *a scrolling device for scrolling and displaying the images other than said selected image among the plurality of images, in response to a determination by said first determining device that said instruction for moving has been given, said selected image*

not being scrolled by said scrolling device; and

a deciding device deciding direction of scrolling, duration of scrolling, amount of scrolling or initial speed of scrolling by said scrolling device, based on a user operation of dragging said another point on said touch-panel.

App. Br. 12 (Claims App.).

Examiner's Rejections and References

(1) Claims 1–5 and 9–10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Motoyoshi (US 2008/0231914 A1; published Sept. 25, 2008), Davidson et al. (US 8,407,606 B1; issued Mar. 26, 2013; "Davidson"), and McNamara et al. (US 2011/0039602 A1; published Feb. 17, 2011; "McNamara"). Final Act. 2–12.

(2) Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Motoyoshi, Davidson, McNamara, and Kim et al. (US 2009/0307631 A1; issued Dec. 10, 2009; "Kim"). Final Act. 13–14.

(3) Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Motoyoshi, Davidson, McNamara, and Nichols (US 2010/0070931 A1; published Mar. 18, 2010; "Nichols"). Final Act. 14–16.

ISSUE

Based on Appellants' arguments, the dispositive issue presented on appeal is whether the cited prior art teaches or suggests the disputed limitation: "a scrolling device for scrolling and displaying the images other than said selected image among the plurality of images, in response to a determination by said first determining device that said instruction for moving has been given, said selected image not being scrolled by said

scrolling device" as recited in claim 1 and similarly recited in claim 10. App. Br. 5–6.

ANALYSIS

35 U.S.C. § 103(a): Claims 1–5 and 9–10

In support of the obviousness rejection of claim 1 and similarly claim 10, the Examiner finds Motoyoshi teaches "an operation console [of an image forming apparatus shown in Figure 1] including a display device having a display screen, and a touch-panel arranged superposed on said display screen for receiving a user operation on said display screen," the operation console comprising: "a display control device controlling said display device such that a plurality of images are displayed on said display screen." Final Act. 2–3 (citing Motoyoshi, Figs. 1, 3).

The Examiner then relies on Davidson and McNamara for teaching the remaining limitations to support the conclusion of obviousness, including:

> a scrolling device for scrolling and displaying the images other than said selected image among the plurality of images, in response to a determination by said first determining device that said instruction for moving has been given, said selected image not being scrolled by said scrolling device.

Final Act. 4–7 (citing Davidson, Figs. 1A–1B, 7B, 7C; McNamara ¶ 56, Figs. 2C and 2D). In particular, the Examiner finds Davidson teaches a multi-touch panel, shown in Figure 1A, configured to receive, recognize, and act upon multiple inputs [from a user's fingers] at the same time. Davidson 1:50–53.

Davidson's Figure 1A is reproduced below:

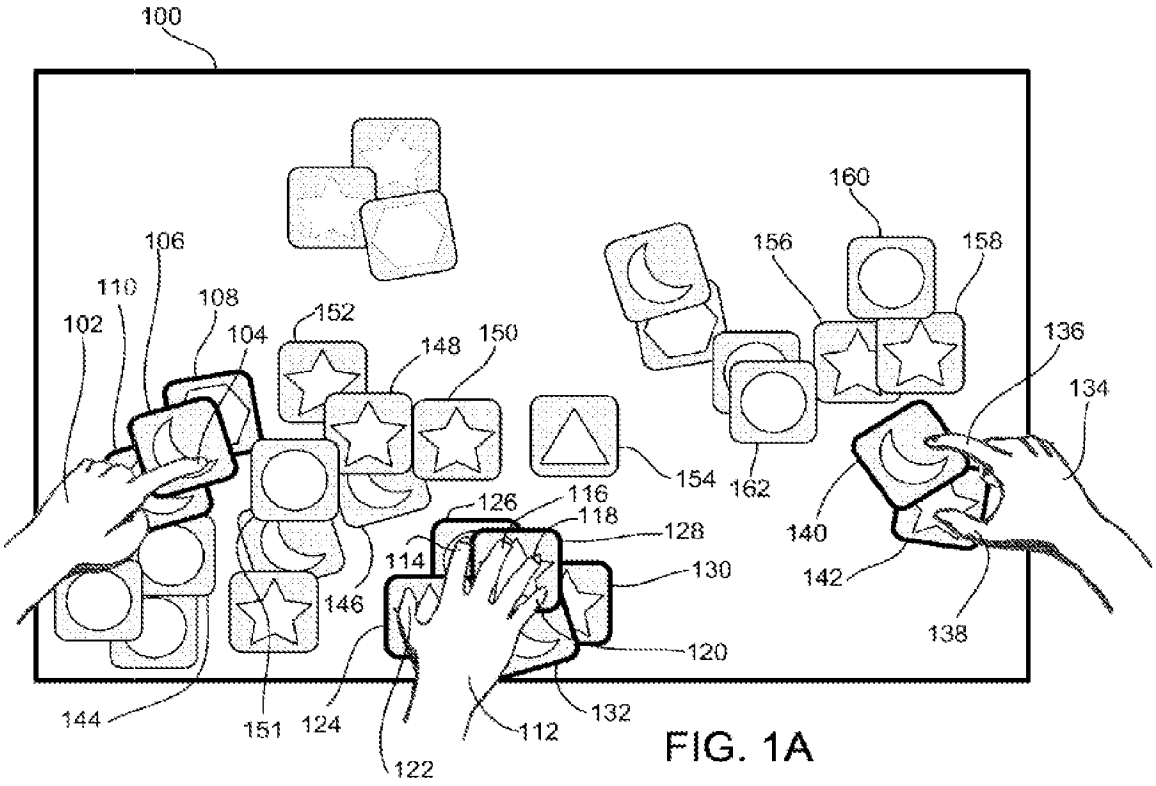

FIG. 1A

Davidson's Figure 1A shows a multi-point touch screen configured to allow a single user to select and control multiple displayed images at the same time, via multiple inputs by dragging and scrolling using different fingers.

Similarly, the Examiner finds:

> McNamara teaches a scrolling device for scrolling [as in Figs.2C and 20, the user gives an instruction to scroll to the next page . . .] and a deciding device deciding direction of scrolling, duration of scrolling, amount of scrolling or initial speed of scrolling by said scrolling device, based on a user operation of dragging said another point on said touch-panel.

Final Act. 6 (citing McNamara ¶ 56, Figs. 2C, 2D).

Based on Davidson's multi-touch panel configured to accept multiple inputs, via a user's fingers at the same time, and McNamara's scrolling

function to scroll according to the given direction of the wipe of the user's finger, the Examiner concludes:

> it would have been obvious … to modify a touch-panel to accept multiple inputs at the same time including holding one more displayed objects on the touch-panel without moving and scrolling other un-holding objects which has been displayed or to be displayed because this will allow the object to be selected more effectively since multiple selection of objects is allowed while browsing them on the touch-panel.

Final Act. 7 (emphasis added).

Appellants do not dispute the Examiner's findings regarding Motoyoshi. Nor do Appellants challenge the Examiner's rationale for combining the references. Instead, Appellants argue the cited prior art does not teach or suggest:

> a scrolling device for scrolling and displaying the images other than said selected image among the plurality of images, in response to a determination by said first determining device that said instruction for moving has been given, said selected image not being scrolled by said scrolling device

as recited in claim 1, and similarly, claim 10. App. Br. 6. According to Appellants,

> Davidson et al. clearly teaches scrolling the *selected* images, whether the images are the images (106, 108, 110) selected by the hand 102 or the images (124, 128, 130) selected by the hand 112 (see, for example, Figs. 1 A and 1 B of Davidson et al.). Furthermore, Davidson et al. does not teach or suggest *not* scrolling the selected images, as specifically required by Appellant's claims 1 and 10.

Id. (emphasis added, original emphasis omitted).

We do not find Appellants' arguments persuasive. Rather, we find the Examiner has provided a comprehensive response to Appellants' arguments

supported by a preponderance of evidence. Ans. 5–8. Therefore, we adopt the Examiner's findings and explanations provided therein. *Id.* As recognized by the Examiner,

> "when the touch-panel 100 of Davidson et al. is implementing with the scrolling function of McNamara et al., the images which are being selected and hold by the hands (Fig. 1A, items 102, 112 and 134 in Davidson et al.) would not be scrolled when another hand gives instruction to scroll and to display other images which are not being selected and are not being hold by the hands (Fig. 1A, items 102, 112 and 134 in Davidson et al.) since the instructions given by each hand on the touch-panel are independent."

Ans. 5 (emphasis added).

In particular, Davidson's multi-touch panel can also be configured to enable a user to use one finger to select an image and use another finger to move other images, as shown in Figures 1A–1B, 3A–3B and 4A–4B.

We note Appellants have not presented sufficient evidence or persuasive argument that modifying Davidson's multi-touch panel to implement the scrolling function as disclosed by McNamara would have been "uniquely challenging or difficult for one of ordinary skill in the art" or would have "represented an unobvious step over the prior art." *See Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418–419). Nor have Appellants provided objective evidence of secondary considerations, which our reviewing court guides "operates as a beneficial check on hindsight." *Cheese Systems, Inc. v. Tetra Pak Cheese and Powder Systems*, 725 F.3d 1341, 1352 (Fed. Cir. 2013).

Based on the record before us, we are not persuaded that the Examiner erred. As such, we sustain the Examiner's obviousness rejection of independent claims 1 and 10 under 35 U.S.C. § 103(a).

Claim 3 depends from claim 1, and further recites:

> a second determining device for determining, while selection of any of said plurality of images is being detected by said detecting device, whether or not said selected image is displayed stationary at a predetermined position, based on a user operation on said touch-panel; wherein
>
> said first determining device determines whether or not said instruction for moving has been given, if it is determined by said second determining device that said selected image is displayed stationary at a predetermined position.

Claim 4 depends from claim 3, and further recites "wherein said predetermined position is an end portion of said display screen."

Appellants argue:

> Fig. 1B and the corresponding description in columns 5 and 6 of Davidson et al. merely show and describe how multiple images can be grouped by overlapping and engaging the different images. Davidson et al. does not teach or suggest anything at all regarding a second determination device that determines whether or not the images are displayed stationary and at an end portion of the display screen.

App. Br. 7–8 (emphasis added)

We disagree. As recognized by the Examiner, "the selected objects [as shown in Davidson's Figures 1A–1B] are being moved from their initial locations and to stay in a new location (a predetermined positon) according to the selection instructions and the moving instructions given by the hands 102, 112 and 134," including to an end portion of the display screen. Ans.

6–7. Accordingly, we sustain the Examiner's obviousness rejection of claims 3 and 4 under 35 U.S.C. § 103(a).

With respect to remaining dependent claims 5, 7, 8, and 9, Appellants present no separate patentability arguments. App. Br. 10. For the same reasons discussed, we also sustain the Examiner's obviousness rejection of claims 5, 7, 8, and 9 under 35 U.S.C. § 103(a).

OTHER ISSUES

In the event of further prosecution of this application, this panel suggests that the Examiner consider rejecting claims 1–5 and 7–9 under 35 U.S.C. § 112, second paragraph, as being indefinite in light of the Federal Circuit *en banc* decision in *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1350 (Fed. Cir. 2015) (holding the term "'[m]odule' is a well-known nonce word that can operate as a substitute for 'means' in the context of § 112, para. 6," and in the absence of a corresponding structure disclosed in the specification, is considered indefinite under the 2nd paragraph of 35 U.S.C. § 112). For example, claim 1 recites several hardware components, including: (1) "a detecting device," (2) "a first determining device," (3) "a scrolling device," and (4) "a deciding device," but none of these devices is described or supported by a corresponding structure disclosed in Appellants' Specification.

CONCLUSION

On the record before us, we conclude Appellants have not demonstrated the Examiner erred in rejecting claims 1–5 and 7–10 under 35 U.S.C. § 103(a).

DECISION

As such, we AFFIRM the Examiner's final rejection of claims 1–5 and 7–10.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED